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Nicoll, Henry

ADDRESS BEFORE THE GRADUATING CLASS OF THE LAW SCHOOL OF COLUMBIA COLLEGE, 1869.

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ADDRESS

BEFORE THE GRADUATING CLASS OF THE

LAW SCHOOL OF COLUMBIA COLLEGE,

BY

HENRY NICOLL, Esq.

1869.

AN ADDRESS

DELIVERED BEFORE THE

GRADUATING CLASS

OF THE

Law School of Columbia College,

ON THE

EVENING OF WEDNESDAY, MAY 19, 1869.

BY

HENRY NICOLL, ESQ.

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ADDRESS.

GENTLEMEN OF THE GRADUATING CLASS:

THE agreeable duty has been assigned to me, of tendering to you, on behalf of the profession, into which you are this night enrolled, a cordial and fraternal welcome.

The importance of the additions which the Law School of Columbia College is yearly making to our ranks, can scarcely be overrated. To those of us who are her foster-children, it is a matter of special pride that our venerated *Alma Mater*, fully appreciating the necessities of the age and what this great metropolis has the right to expect from her, has so wisely and largely extended the sphere of her usefulness by the establishment of this Law School. We rejoice to know that it has already become preëminent by reason of the thoroughness of its course of instruction, and the learning and ability of its distinguished head.

These recurring anniversaries suggest many themes on which one might profitably and agreeably dwell. Seeing you here to-night, ardent with hope; with all the enthusiasm and energies of life's spring-tide, ready to enter the field of action with a full confidence in your ultimate success, for such is and ever should be youth; we, your seniors, are carried back in memory to the days when we, too, came upon the busy scene, when with us as now with you,

"The heart promised what the fancy drew,"

and hope's bright light flashed along our path.

If now we are weary with the long travel, if we have found the cold reality too real, we will not sadden your thoughts by any mournful retrospect on our part of disappointed hopes and unaccomplished purposes; they are but the common lot of humanity.

The future is all before you, and success so largely depends upon the will, that he is almost sure of winning it who determines that he will do so.

While students of this institution, you have acquired a knowledge of the Law as a science; you have been carefully and systematically instructed in all the branches of Jurisprudence; every great principle has been elucidated and rendered familiar to you. You have been made to feel, as it were, "the very pulse of the machine." You have been taught to discriminate cases, to apply the analogy derived from one to another; to trace principles from the first appearance of the germ in a rude age, to its full and perfect expansion in later and more refined times.

With the advantages which you have derived from such a course of instruction, it cannot be doubted that you have learned to admire and revere the law, and to appreciate the grave and elevating responsibilities of its members, whether on the Bench or at the Bar.

It cannot be that you have not formed a proper estimate of your high calling. You come among us, I am sure, with a just sense of the importance of our great profession, ready to promote, with all your best zeal, its efficiency, and determined to maintain at all times its true dignity.

There can be nothing which more deeply concerns a people than the laws under which they live and to which they look for the protection of life, liberty, and property. Law is the ligament which binds society together; break it, and you have anarchy; loosen it, and the work of disintegration at once begins. In fact, the law is the very essence of the social compact; society can no more be conceived of without it than matter without form. Even if the natural condition of the human race be not, as Hobbes characterizes it, a state of war, we all know that without the restraint of law, man is the merest barbarian; the finer qualities of his nature can only be brought out under culture, and there cannot be culture without the security which is afforded by a government of laws. At the very dawn of civilization we meet with traces of law. Could we but get a glimpse of the every-day life of the Lacustrine people, that mysterious race of pre-historic times, we should doubtless find them living in communities governed by a system, rude though it may have been, of law.

The history of a nation is portrayed in its laws; for in them may be traced each successive step of progress from a barbaric era through long ages of growth, slow at some periods and rapid at others, until the nation culminates in its highest development. In the rude beginning, the simple wants of man require but few laws to furnish adequate protection; but his destiny is progress; his instincts force him onward; and as his energies work out new channels for their employment, new provisions of law become necessary for his security: thus the action of civilization and the law on each other is reflective, each being at once the cause and effect in the advance of a people from a lower to a higher condition. The enactments which may be sufficient and proper for one age, become unsuited to a succeeding one, and are repealed or modified according to the necessities of the age. The law must be in harmony with the present wants and condition of a people; and he is a wise legislator who appreciates and acts in obedience to this truth. The stern declaration of the old barons who framed "Magna Charta," "Nolumus mutare leges Angliæ," had a political significance, and was required by the exigency of the times. But such a rule would be impracticable in any nation where there is a spirit of progress, and least of all with the Teutonic race. It is true, however, that what the collective wisdom of a preceding age may have ordained as the law, is not to be lightly done away with. Existing statutes, although the causes which led to their enactment may have ceased, are not to be repealed except upon the maturest consideration: there can, indeed, be no greater evil than that crude and unskilful legislation which rashly unsettles the landmarks of the law, and of which we have too many instances in our yearly statute-books.

The highest and noblest idea which the law imparts is, that it is absolute truth, manifested in the relations of men with each other; in other words, that the law is the expression of those great principles of eternal justice which the Almighty has ordained—revealing them through the consciences of men—and which are unchangeable because they are the truth. Whether these principles be called "the Divine Law," whether they be characterized as "positive morality," or whether they spring from the doctrine of "the greatest utility," it matters not. We know at least that they constitute a law which is

higher than any human enactment, which binds as well the lawgiver as the subject, and which our reason tells us must be obeyed. Of the law when in harmony with these principles, Cicero in earnest language exclaims: "Major hereditas venit unicuique nostrum a jure et legibus quam a parentibus." Such was the law which the "judicious" Hooker contemplated when he says, in language the exquisite cadence of which falls on the ear like music: "Of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world. All things in Heaven and in Earth do her homage, the very least as feeling her care and the greatest as not exempt from her power, both angels and men and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent admiring her as the mother of their peace and joy."

This lofty and true ideal of the perfect law, though it may be approached, can never be attained; the grossness of our nature, the sway of passion, the selfish instincts, all serve to prevent our reaching it. Still there is an instinctive feeling in the human heart that this goal must be sought after, and that Justice is the birthright of man. The influence of this feeling may be weakened, it may be paralyzed for a time, but it never can be extinguished in any community, even when living under the most absolute form of government. No people possessed of free institutions can become so indifferent to their rights as to permit a continuous and systematic violation of justice in any branch of their Government. Unscrupulous legislators, a corrupt executive and venal judges, may for a time be suffered to practise their iniquities; much may be endured without resistance; the transgressor may become shameless and emboldened by the temporary passiveness of the people; but the accumulation of wrong will sooner or later be found intolerable, and the day of reckoning will assuredly arrive. Then the strong man in his might will break the chains with which he has permitted himself to be bound, and Truth and Justice shall at last be vindicated.

The law of any particular era will be found to exemplify the predominating characteristics of that era; its liberal or narrow spirit, its ignorance or knowledge. The laws which prevailed in the countries of Europe during the Middle Ages, furnish ample evidence

of the dwarfed ideas and puerile superstition of the times. An implicit belief in the anathemas of the Church was universally entertained; nor was their effect supposed to be confined to human beings—the brute creation was deemed to be equally subject to the exorcising powers of the Church. The mode of dealing with animals who had made themselves amenable to discipline was minutely prescribed. Being considered as inops consilii, it seems to have been an object of special care on the part of the Court to see that they should be properly represented and defended by competent counsel.

An amusing case is gravely related by a medieval jurist of a prosecution which was instituted in France so late as the 16th century against some caterpillars who had suddenly commenced their ravages in the fields of the Province of Valence.

The unfortunate insects were solemnly summoned, by a proclamation read in every Parish Church throughout the Province for three successive Sundays, to appear in Court and show cause why they should not be subject to anathema. Failing to appear on the appointed day, the caterpillars were defaulted with all the prescribed formalities. But in consideration of their helpless condition, counsel were nevertheless designated by the Court to act in their behalf. These advocates were allowed to interpose sundry dilatory pleas on the part of their clients, which were overruled; the case was then argued upon its merits. Every ground that could be taken in excuse of the caterpillars was presented. The Court, however, after much deliberation decided against the defendants, and thereupon judgment of "anathema" was pronounced. We are told that the caterpillars, as in duty bound, submitted in all humility to the sentence, and instantly departed from the fair fields of Valence.

You are doubtless familiar with the wager of battle, which was a recognized and efficient part of medieval jurisprudence. It was the homage paid in a rude age to force, as an ultimate arbiter of human rights. The right of demanding the test of mortal combat was not confined, however, to the parties litigant; the Court itself might be challenged to maintain its decisions at the point of the sword. A party dissatisfied with the judgment of the Court, had the privilege accorded to him of requiring the judge to meet him in a personal encounter. Any member of the Court might be so

challenged, but the one selected was entitled to call upon his brethren, who had participated in the decision, to assist him in the combat. The suitor could resort to this appeal at any stage of the proceeding, even when an interlocutory point had been decided against him. If unsuccessful, he was only liable in a pecuniary penalty to the judge for the wrong, and the judge, if vanquished, though his judgment was reversed, was exposed to no further punishment. Whether the imposition of this perilous personal responsibility upon the members of the Court worked well or not, does not appear; it certainly fell into disuse long before the wager of battle, as between parties litigant, had ceased to be a frequent mode of settling controversies. We may therefore infer that it was found to be attended with inconvenience. It undoubtedly gave muscular and fighting men an undue prominence in the administration of justice. Indeed, while this system prevailed, a seat on the bench must have been an uneasy one to a judge who should unfortunately happen to be of a delicate physique; but perhaps there were some countervailing advantages. We dare to say that in those days there was little display of arrogance on the bench. When suitors of equal fighting capacity with the Court were being heard, they were at least listened to without interruption, and judgments were not likely to be rendered without full examination and upon a conviction that they were correct.

A judge conscious of having rendered an unjust decision, would enter at great disadvantage into a personal conflict with the outraged suitor; for, according to the belief of the age, victory could only be on the side of the right.

It is an old maxim that extremes meet. The highest civilization and the rudest barbarism often exhibit phases which are common to both. Perhaps the time may come when, in the progress of events, the interests of society will require the restoration, in a modified form, of the personal liability of the judge to the suitor wronged by a corrupt and unjust decision. Instead of the wager of battle, which would be inconsistent with our advanced civilization, redress may be given in the form of an ordinary action at law, in which the dishonest judge shall be held responsible for the injury done by him. The advantages of such a proceeding over the slow

and unsatisfactory trial by way of impeachment, will readily suggest themselves.

Perhaps no better instance can be given of the gradual change which is made through successive ages in any one branch of the law, than our trial by jury. Traces of the system, rude and imperfect it is true, may be found in the earliest periods of Scandinavian history, and there is good reason for supposing that this mode of trial has always existed in varying forms among the nations of Teutonic origin. The trial by jury, as now established, could scarcely by any possibility have been created; it could only have acquired the perfection which may now be claimed for it, through the slow growth of successive ages. When we are first made acquainted with a jury in English history, we find it composed of twelve men taken from the neighborhood of the contending parties, and selected solely because they were supposed to be acquainted with them, and to be also familiar with the facts of the case. These were deemed to be important considerations in enabling the jury to arrive at a proper verdict. At the present time, as we all know, the essential requisite of a juror is, that he shall have formed no preconceived opinion of a case, and that he shall be indifferent as between the parties, and under no circumstances will he be permitted to act upon his personal knowledge, should he have any, of the matter in dispute. Who can say when this radical change began, or when it was entirely perfected? It went on, step by step, and all that the legal chronicler can tell us is what the practice once was; that through successive years it was subject to modification; and that at last the reverse of what was once the rule became the established law.

The plastic power of the common law, in adapting itself to the changing relations and advanced condition of society, has always been acknowledged to be not the least of its many excellencies. One of the strongest arguments which can be urged against a codification of the law is, undoubtedly, that a code must necessarily be fixed and positive, and that it cannot be made to accommodate itself to new relations as they arise. We are far from accepting this as a sufficient objection to a code, because we believe that, by careful rules prescribed for its interpretation, a code may be ren-

dered elastic and capable of being adapted to the wants of successive generations. Still, there can be no question that, under a system like the common law, administered by intelligent and learned judges, its admirable provisions are capable of being extended without difficulty to new cases as they arise in the ever-changing relations of human affairs.

A proper comprehension of the principles of law, as interpreted and enforced, cannot be had without a knowledge of the history of the times in which they originated or were developed. The influence of political causes in shaping the laws is never to be overlooked. When one is perplexed with the subtlety, the nice distinctions, and oftentimes the false reasoning, which are to be found in so many reported cases, it is more than a matter of curiosity to search in the political history of the times, perhaps centuries ago, for the disturbing causes: in doing so, it will generally be found that much of what now mars the harmony and symmetry of the law had its origin in the necessity of establishing some peculiar State policy of the time.

Take, as an example, our law of real estate: after all that the liberal spirit of later days has accomplished in lopping off its excrescences and giving to it shape and simplicity, it is still a system of much artificiality. We have done away, it is true, with many nice, and subtle distinctions; still, much remains, and it must be conceded that, to a very great extent, the laws which now regulate the title and transfer of estates in land are conventional: they are not founded on the principles of right reason, as now understood, but on what those grim old barons of four or five centuries ago regarded as such when looked upon from their own selfish standpoint. They believed their broad acres to be the only real foundations of wealth and power, and the perpetuation of their estates through successive generations of a family a matter of the highest importance. A powerful body acting in concert under the pressure of a common interest could scarcely fail, in those early days, of accomplishing its purposes, particularly when, as we know, the great mass of the people were in a state of ignorance. A system was established upon foundations so deep and broad that it remains in most of its leading features untouched in the parent country even at the present day. Although the feudal system was never fully established in England,

thanks to the spirit of freedom which our ancestors possessed, still its influence was considerable, and it has added much to the complexity of our law of real estate. Again, who does not see in this branch of our law evidence of the struggle, in those early days, for supremacy on the part of the Church? On the one side, the wily and scheming ecclesiastic, imposing by his superstitious practices upon the credulity and ignorance of the age, was steadily adding to the domains of the Church; while, on the other, both Parliament and the courts of justice were striving to counteract a movement which, they saw, if successful, exposed the lands of the realm to ecclesiastical control.

It was thus that "Uses and Trusts" came into being, devised as they were to place legal estates beyond the control of the law, and thereby defeat the statutes which had been made against mortmain.

The War of the Roses—that obstinate and prolonged contest between the rival houses of York and Lancaster—greatly increased the employment of this new system, which was at variance with the old tenures of land. Uses and Trusts were found by the contending parties to be effectual modes of limiting attainders and of preserving estates when each side, in its turn victorious, confiscated the lands of the vanquished. An age of more liberality, and one in which the rights of the people began to receive some attention, succeeded this bloody struggle. The politic Henry the Seventh saw the necessity of weakening the influence of the nobility; through his courts he endeavored to facilitate the alienation of lands. The Parliament, however, which was under the control of the higher classes, by its countervailing statutes succeeded too often in rendering this attempt of the Crown ineffectual.

We pass on to the bitter religious dissensions which arose in the reign of his son, when the nation abjured her old faith, and was convulsed by the discord which arose from the conflicting opinions of the people on matters of religious doctrine. I need not remind you, however, of that era of England's prosperity and glory, under the wise and conciliatory government of Elizabeth. Then "grew the arts of War and Peace;" then Shakespeare and Bacon lived; then, too, the Law began to expand into a system, under the great

men who adorned the bench in the long reign of that illustrious queen.

You will tell me that Bacon fell; he did so, and his fall is a sad picture in the history of humanity. His mighty intellect, and his masterly achievements as the first and greatest of the School of Inductive Philosophy, have made him famous, it is true; but the fact that in an unhappy hour he paltered with justice is, and ever will be, a perpetual stigma upon his memory. What is the lesson which the fate of England's greatest chancellor teaches us? It is, that judicial corruption must always be regarded as the greatest of crimes, because the very foundations of the social fabric are shaken when the rights of the citizen under the law are rendered insecure.

This brief and hasty reference to the effects of the political action of past ages upon the law may account for some of the difficulties which the student meets with when he is seeking to trace, throughout the labyrinth of conflicting cases, some principle of law. Oftentimes, just as it seems to be within his grasp, it eludes him. Some limitation or exception not suggested in a previous case looms up in a succeeding one with irresistible force, and the bewildered student becomes wearied with the fruitless task of finding a solid ground of reason to stand upon, when in fact there is none. Perhaps it may be some consolation for him if he shall be told that much of the confusion and uncertainty which he meets with is but the offspring of causes political or social in their nature, which have long since ceased to exist, but which have left their indelible impress upon the law. Let not the lawyer think that he can neglect the idols of a past age. He cannot afford to be ignorant of the law as it once was. The doctrines of contingent remainders, and executory devises, and springing uses; the subtle and metaphysical manner of treating the words, "dying without lawful issue;" the famous "Rule in Shelley's case;" and a thousand other distinctions as mysterious and confusing, must be understood; for many titles to lands in our midst rest on these artificial principles of law, which had their origin in the political necessities of past centuries.

Let me call your attention to another serious and prolific cause of uncertainty in the law. It is one which has a deeper foundation than those already referred to, because it springs from our imperfect

nature. The lawgiver has, in fact, to deal with the almost infinite relations of men toward each other; but his capacities are finite. They will only enable him to anticipate or conceive of but portions of the whole. The law must be promulgated in general rules; there cannot be a law for every class or grade of men, much less for every individual. It is beyond the power of the human intellect to so frame a law that it shall operate alike on all. What is perfectly fair and proper as a general rule, may, when applied to a particular case, work the most palpable injustice. The conscientious lawgiver will strive to lay down the rule in such a manner as to produce the utmost good. He will endeavor to bring under his view every possible case upon which the rule is intended to operate; and yet, with all this caution, there must be much which even the wisest and best of legislators will overlook, and which, had it suggested itself to the mind, would have been provided for in the law. This must happen even with intelligent, far-seeing minds; but when we consider how many statutes are framed by unskilful legislators, and how often decisions are pronounced by incompetent judges, it is not a matter of surprise that the law and justice should be found, in many cases, so far apart.

Let me illustrate my meaning by a reference to our famous statute of frauds. By common consent, in many nations it has been found that the interest of a community requires that certain contracts shall be void unless expressed in writing. To prevent frauds and perjuries, such an enactment became a law in England more than two centuries ago. Now, it can easily be seen that the only real benefit which can arise from such a statute is of a preventive character; in other words, that a community knowing of the existence of such a law must necessarily seek to obey it. But when the statute is invoked by a party who does not deny his contract, but seeks to avoid its performance through the aid of this statute, the moral sense becomes outraged, and no judge can be exempt from the bias which such conduct must produce. The defence of the statute being persisted in, can it be wondered that the judge unconsciously becomes very critical and discriminating in his examination of the case, seeking to find some special reason to warrant his making a decision which his conscience tells him the justice of the particular

case requires, but which is, in fact, against the law? If the matter were to stop here, the evil would not be a serious one; but the decision being a judicial interpretation of the statute, an exception is engrafted upon the latter; in other words, the law has been altered to meet a particular case. Subsequently another case arises, appealing equally to the moral sense of the judge, but which may require a still further exception to be made to the rule, even as already modified or extended.

The like motives operating in succeeding cases, cause the same process to be repeated; and thus the statute, loaded down with exceptions and limitations growing out of the hardships of particular cases, is strangled by their pressure. Although more than two hundred years have elapsed since the statute of frauds was enacted, the meaning and application of many of its provisions continue to be the subject of doubt and discussion in the courts. Many other statutes will suggest themselves to your minds, to which these remarks will apply with equal force.

In fact, the uncertainty of the law has passed into a proverb. To the reasons for this uncertainty to which we have briefly alluded, and which seem inseparable from the very nature of things, another must be added. The administration of justice has too often fallen into the hands of men who either from want of sufficient intelligence, or by reason of their ignorance of legal principles, or from a perverse and corrupt nature, have proved themselves unfit for the high trusts confided to them. When such men are found upon the bench, it is not to be wondered at that our books of reports will furnish many crude and conflicting decisions. Indeed, with all these blots upon the law, we are almost forced to confess that there is some color for Bentham's severe sarcasm, that such is the uncertainty of the law that in nine instances out of ten, a given case may be decided either way without any imputation upon the ability or honesty of the judge. Far be it from my purpose, by these remarks, to weaken your respect for the great body of our law. I have dwelt upon these difficulties, which every lawyer must encounter in the pursuit of his profession, because I think a proper comprehension of them will lead you to study more closely the history of the law, and to make allowances for imperfections which you will perceive originate

in causes which can scarcely be avoided. The law, with all its blemishes, is worthy of your highest admiration. If you may not see in it that "*summa ratio*" which Lord Coke describes to be its essence, you cannot but feel that when honestly administered, it will afford to every citizen that protection which he has a right to demand from the Government under which he lives.

We look back with veneration upon those illustrious men who, through a long succession of ages, as judges and lawyers, have given to us the precious fruits of their mental labor. What they have done in developing the law, in moulding its principles and extending the sphere of their application, we have not time to speak of; suffice it to say that to their labors we owe a system of law which in its great features has been found adequate to the wants of men in the varied relations of their daily lives.

Shall we be permitted to live under the all-pervading influence of this law which we have inherited from our fathers? Shall we transmit it, a rich and unimpaired legacy, to our posterity? These are solemn questions which we are daily putting to ourselves. Every reflecting man sees around him causes in active operation which cannot but awaken the gravest doubts and fears. We are drifting—shall I not rather say, hurrying—to a catastrophe; the moral atmosphere is filled with gathering clouds, ominous presages of an approaching calamity: if the storm bursts, it may shake every hearthstone in the land. I do not desire to speak words of discouragement, but in addressing those who are about to assume the serious responsibilities of life, I deem it to be a solemn duty to impress them with a sense of the present danger, and to make them feel that it can only be averted by earnest, vigorous, and united action on the part of all who have an interest in the preservation of good government and social order. When all classes whose interests are now at the mercy of the unscrupulous plunderers of the people, can be made to see that an attack on one is a menace to the others; when the belief becomes universal that we can only be saved by the united effort of all to stay the surging tide of corruption which threatens to overwhelm us; when, in fine, public opinion shall be fully aroused, then, and only then, will there be a chance of purging from the body politic the perilous stuff which now weighs it down, and which, if

[redacted]

not eradicated, must lead to death. Thus far, men seem to have moved on with an alarming indifference to what is passing around them. We have an independent press which does not hesitate to denounce in proper terms the schemes of fraud and corruption which the history of almost every day presents. The pulpit fearlessly exposes them. No gathering of men can take place in which the evils of the times are not discussed and acknowledged, and yet, for want of a concentrated public opinion which shall unite, as it were in a focus of consuming fire, the thousand rays of individual indignation, "no sign is made, no voice is heard." Day by day we grow familiar with atrocities upon the rights of the unprotected. Acts of violence are committed, which in better times would send the offender to a prison-cell; and yet, safe in the possession of his ill-gotten gains, the felon lives unharmed. Vice and corruption with their brazen and defiant face stalk through the land, while honesty and fair-dealing are fast falling into disrepute.

Believe me, these are not the days for "the summer patriot or the sunshine soldier;" the inevitable contest is at hand, and it will be one *pro aris atque focis*. The Republic is in peril, not from a foreign enemy, but from foes within, and it can only be saved by resolute and fearless action: a public opinion must be formed which will demand the punishment of the offender and sustain those who shall make the accusation and prosecute the guilty to conviction. I know I shall be told that society itself is demoralized, and that what we see passing in high places is but the evidence of the increasing corruption of the people. This is regarded as a convenient and plausible excuse by private and public plunderers. We are forced, with pain, to confess that there are grounds for the charge. We seem to be fast approaching that degraded state into which the Roman people had sunk in those dismal days which preceded the fall of the Republic, and of which we have a vivid picture from Sallust's caustic pen: "The youth of Rome, taught to look up to riches as the sovereign good, became apt pupils in the school of luxury; rapacity and profusion went hand in hand; careless of their own fortunes, and eager to possess those of others, shame and remorse, modesty and moderation, every principle gave way." Alas! who may not, in this description of a society of two thousand years

ago, see an alarming resemblance to what is passing before our eyes? God grant that the remedy which Rome sought and found in the sway of an arbitrary ruler, firm and politic though it may have been, be not the only one destined for us.

But let us not take so despondent a view of our affairs, bad as they may be. We know that the sphere of corruption has widened within the past few years to an alarming extent, and the reasons for it are obvious. The past decade has been one of stupendous events; but it cannot be that a nation which has been able to preserve its existence through an internecine war almost unparalleled in magnitude; a nation which presents such marvellous evidences of intellectual activity, and which is daily opening new channels of material wealth,—I say it cannot be that such a nation has become decrepid, or that it will not sooner or later throw off the clogs which impede its onward progress. Let us not, as it must be admitted too many are doing, acknowledge that it is useless to make an effort to stay the downward progress of things. It dishonors our manhood to submit supinely to the degraded rule which we allow to be exercised over us: it is not true that all that we have lost by our own culpable inaction may not be recovered. The disciplined cohorts of the corruptionists are indeed a formidable body, but they cannot prevail when the better elements of society shall be thoroughly organised and arrayed against them. It is a fatal fallacy to think otherwise. Some responsibility, it is true, must be assumed, but a few bold men acting in concert and with energy would quickly rally around them thousands who are now suffering in silence. The mass of the people would awaken from their delusion, and the result could not be long in doubt. We are not "sick unto the death;" the disease may be driven from the system; and every good citizen, instead of despairing of the future, should see around him sufficient evidence of vitality in the body politic to save it from destruction. We will not give up our belief in the people's capacity to govern themselves, and to restore a healthier state of things. It cannot be long before there must be a solution of this solemn question; the movement must soon take place, for the evil has become well-nigh intolerable; a spark may kindle a fire which will spring at once into a blazing conflagration. The result cannot be

doubtful, when an indignant people are determined to pursue fr

doubtful, when an indignant people are determined to purge from the social body the corruption which has fastened itself upon it.

In such a movement, what should be the part of the legal profession? It will not be false to its glorious traditions. The lawyer cannot forget that he is the conservator of the eternal principles of justice, and his place in the struggle should be among the foremost. History is full of examples of what has been achieved by the lawyer in the cause of civil liberty and good government. We cannot falter now without being recreant to the memories of those who have gone before us. In nothing, perhaps, is the downward progress of things more apparent than in the decline which has taken place in the legal profession. It has already lost most of what gave to its members a just preëminence. It can no longer hold out to the emulous young man who is entering its ranks the rewards which are worthy of his ambition. The profession is, in fact, degenerating into a merely sordid vocation, whose highest aspiration is the acquisition of wealth; nor perhaps is this to be wondered at: the standard which we have set up, by which respectability is gauged and social position defined, is simply money. We ask not how it may have been acquired; we bow before it with reverence; we acknowledge it as the only power which can make itself felt: its possessor is "the observed of all observers."

In this vast metropolis you will find thousands of men as yet uncorrupted, who pursue their daily unobtrusive walk through life, fulfilling all the claims which duty exacts, exercising a discriminating benevolence, foremost in all good works; but like "the brave men who lived before Agamemnon," they are ignoble and unknown. The record of our great men is the record of our millionaires: money alone would seem to be the test of merit, and without it we are poor indeed.

> "Est animus tibi, sunt mores, est lingua fidesque;
> Sed quadringentis sex, septem, millia desint
> Plebs eris."

It would be strange indeed if the legal profession were insensible to these influences. Even with the young lawyer, it is too often his chief thought, by some lucky stroke, some large and easily earned fee, to lay the foundation of his fortune. The days when men advanced themselves by the slow but sure process of gradual accretion, and by the practice of a wise economy, have passed; the idea, which was once the lawyer's pride, that his services were of an honorary character, and not the subject of pecuniary compensation, has long ago been exploded. The advocate of the present time would laugh at the *quiddam honorarium* of the early days of the profession. But let us remember that when the lawyer worked not for pecuniary greed, the profession was indeed a great one; it was then the road which led to all the honors and dignities of civil life. Then the law was followed not for thrift, but for reputation; then arose those great men who have made their lives famous as profound lawyers and illustrious judges. I know that if I speak of the change which has befallen the profession in these later days, I shall be told that it is owing to the times, and that, in this respect, it is folly to compare the present with the past. It is true, we count our numbers by thousands, and that probably as much business is now despatched in a single day as was done in a year by the lawyers of half a century ago. It is true, also, that men think quicker and are under fiercer excitements than formerly; that most of us are driven onward by a consciousness of a vast work before us; and that

> "We can but heed
> The restless sand's incessant fall,
> Importunate hours that hours succeed,
> Each clamorous with its own sharp need,
> And duty keeping pace with all."

I am not insensible to these considerations, nor do I overlook the feeling which unconsciously sways the "laudator temporis acti," who is too apt to imagine the age in which he is still living to be degenerating because he is himself declining. Still, with every proper allowance in these respects, I dare to affirm that the great profession of the Law has ceased to hold its proper place, and that it exerts no considerable influence upon society. I know that, from the inevitable tendency of our political institutions in these later days, it is almost impossible to secure the election of competent men for any of the branches of our Government: and the Bar, in this respect, must bear its share of the evil. All the avenues of political advancement are closed against the lawyer; a seat on the bench as a reward of a

life of usefulness and honor at the bar is the most improbable of all things. Still, though he cannot fight single-handed against the evils of the times, there yet remains a wide field in which the influence of the lawyer may be beneficially exerted. No class of men in the community is so cognizant of the evil tendencies of the times. The lawyer is brought face to face with many of the phases of the corruption of which I have spoken. Individually, it is true, he may achieve nothing, but an organization of the independent members of the profession, familiar, in a greater or less degree, with the course of events, and ready, upon the proper occasion, to make a fearless exposure of fraud and crime in whatever quarter occurring, could not fail to exercise a potent and salutary influence. Such an organization, if composed of the earnest and intelligent men of the profession, would of itself strike terror into the evil-doer, and would largely prevent the perpetration of fraud and crime. But it would do still more; it would be the nucleus around which would quickly gather the approving and coöperating sentiments of all other classes; and thus would be formed that sound public opinion of which I have already spoken as so essential in eradicating the fearful evils of the times. To the young men of the profession, and especially to those who have been here taught to form a proper estimate of the law, and of the influence which it ought to exert upon all classes, I trust these remarks will not seem inappropriate.

I shall, indeed, have done much if, by any thing I have said to-night, I shall have induced them to institute a movement by which the concentrated opinion of our profession may be brought to bear on the questions of the day; questions which come home with such perilous force to the business and bosoms of all men, and which must sooner or later be solved.